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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN CHAVEZ,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Civil Action No.: 07 civ 7985 (GEL)

ANSWER

ECF

Defendant, answering the plaintiff's Complaint by its below listed attorneys, alleges upon information and belief as follows:

1. Denies as allegations of law the allegations contained in paragraphs 1 and 2 of the Complaint.
2. Admits that on July 23, 2006, plaintiff was a crew member aboard the USNS MARY SEARS and, except as admitted, denies the remaining allegations of paragraph 3 of the Complaint.
3. Denies the allegations contained in paragraph 4 and 5 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

4. If the plaintiff sustained any injuries and/or illnesses as alleged in the Complaint, said injuries and/or illnesses were caused in whole or in part by plaintiff's own negligence and/or by the negligence of others for whom this defendant is not responsible, and were not caused or contributed to in any matter by any negligence of this defendant.

SECOND AFFIRMATIVE DEFENSE

5. The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

6. Upon information and belief, the USNS MARY SEARS was not in this District when suit was filed and plaintiff does not reside in this District; accordingly, this action should be dismissed for improper venue.

FOURTH AFFIRMATIVE DEFENSE

7. Upon information and belief, venue is improper in this action and this action should be transferred to the appropriate United States District Court.

FIFTH AFFIRMATIVE DEFENSE

8. Plaintiff failed to mitigate his damages in that, among other things, he failed to make reasonable efforts to work.

SIXTH AFFIRMATIVE DEFENSE

9. Plaintiff has received all maintenance to which he is entitled. All cure to which plaintiff is entitled has been paid without expense to him.

SEVENTH AFFIRMATIVE DEFENSE

10. Upon information and belief, plaintiff's action is barred by his failure to follow the requirements of 46 U.S.C. § 30101.

EIGHTH AFFIRMATIVE DEFENSE

11. Defendant contends that if it has any liability to plaintiff, which is denied, such liability was incurred without the privity or knowledge of defendant, and the defendant is entitled to, and hereby claim, the benefit of the statutes of the United States regarding limitation of liability, 46 U.S.C. § 30501, et seq., and contends that its liability, if any, is limited to the value of its interest in, or the full value of the USNS MARY SEARS and the amount of pending freight, if any, as of the date of the incident, or the completion of the voyage the vessel was on at the time of the alleged incident.

NINTH AFFIRMATIVE DEFENSE

12. This action should be dismissed for lack of subject matter jurisdiction.

TENTH AFFIRMATIVE DEFENSE

13. Plaintiff's demand for a jury should be stricken.

WHEREFORE, defendant demands that plaintiff's Complaint be dismissed with reasonable attorneys' fees, costs and interest to defendant; in the alternative, if defendant is found liable to plaintiff, defendant's liability if any, should be limited to the value of its interest in, or the full value of the USNS MARY SEARS and the amount of pending freight, if any, as of the date of the incident, or the completion of the voyage the vessel was on at the time of the alleged incident; defendant further demands that the Court grant to the defendant such other further and different relief as the justice of the cause may require.

Dated: Roseland, New Jersey
December 12, 2007

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By: /s/ John R. Geraghty
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CERTIFICATION

This is to certify that, on this 12th day of December, 2007, a copy of the foregoing Answer was served in accordance with the Federal Rules of Civil Procedure, and/or the Local Rules of the District of New Jersey, and/or the Southern District of New York's rules on Electronic Service upon the following parties and participants:

Robert E. Ashkin, Local Counsel
580 Broadway, Suite 1101
New York, NY 10012
Attorney for Plaintiff

Dennis O'Bryan, Esq.
O'Bryan Law Center, P.C.
401 S. Old Woodward, Suite 450
Birmingham, Michigan 48009
Attorney for plaintiff

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2007

/s/ John R. Geraghty
John R. Geraghty (JG--2936)

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